



OFFICE OF THE INDEPENDENT POLICE AUDITOR

CITY OF SAN JOSÉ

OCTOBER 1996

VOLUME 2

FUNCTIONS OF THE OFFICE



The Office of the Independent Police Auditor (IPA) was established for the purpose of auditing the investigations of citizen complaints alleging misconduct by members of the San José Police Department (SJPd). This office opened its doors to the public on September 13, 1993. The IPA is independent from all other City entities and reports directly to the Mayor and to the City Council.

The IPA has three primary functions: (1) to provide an alternative forum where citizens may file complaints; (2) to review the investigations of citizen complaints conducted by the SJPd's Professional Standards and Conduct Unit (PSCU); and (3) to promote public awareness of a citizen's right to file a complaint. The Independent Police Auditor routinely meets with various groups and organizations to increase public awareness of a citizen's right to file a complaint.

1996 MIDYEAR REPORT

The IPA's 1996 Midyear Report became public on September 6, 1996. Covering the period from January 1 to June 30, 1996, the report incorporates the statistics for the first six months of 1996 and pending issues from the 1995 Year End Report. In the first half of 1996, there was a total of 321 complaints, including In-Process complaints pending classification. The following information is included in the IPA's 1996 Midyear Report:

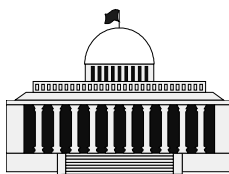
- ☒ Legislation affecting the IPA and the PSCU
- ☒ Updates on Prior Issues and Recommendations
- ☒ Changes at the Professional Standards and Conduct Unit and the Office of the Independent Police Auditor
- ☒ Comparison of statistics analyzed for the period of January through June for the years 1994, 1995, and 1996
- ☒ Statistical background of subject officers and complainants
- ☒ Complaints and allegations listed by City Council District

For a copy of the **1996 Midyear Report**, please contact:

Office of the City Clerk
801 N. First St., Ste. 116
San Jose, CA 95110
(408) 277-4424

NEW LEGISLATION

AFFECTING THE FILING OF COMPLAINTS AT THE IPA AND THE PSCU



Codified at California Penal Code Section 148.6, a new law makes it a misdemeanor to knowingly file a false misconduct allegation against any peace officer. Any law enforcement agency accepting an allegation of misconduct must have the complainant read and sign a specified information advisory. Each complainant filing a complaint is informed of the Boland Admonishment and provided with the form for their signature.

When a complainant does not return a signed Boland Admonishment within 30 days, the IPA and the PSCU determined that the complaint would be closed with a "No Finding" and the officer's name would not be attached. However, an intake investigation would still be conducted which involves reviewing the evidence related to the complaint incident including any photos, medical releases, or police reports. The IPA receives all of the related police reports for each complaint closed due to a lack of a signed admonishment. Reviewing the reports helps the IPA determine whether further investigation is needed. The PSCU and the IPA decide on a case-by-case basis whether the facts and allegations of a particular complaint necessitate an investigation despite the lack of a signed admonishment. From January to June 1996, only four out of 43 complaints closed due to the lack of signed admonishment had been reopened as Department-Initiated complaints.

On July 29, 1996, the Attorney General's office issued an opinion, which indicated that, the investigation of a police misconduct complaint may occur without a signed Boland Admonishment. This interpretation is consistent with the procedure established by the PSCU.

As of June 30, 1996, forty-three complaints were closed because of a lack of a signed admonishment. Of those 43 cases, ten were filed at the IPA and 33 at the PSCU. The 43 complaints represented 17% of all cases (235) classified during the first six months of 1996.¹

The IPA is committed to ensuring that misconduct complaints are investigated as fully as possible under current law. The IPA will continue to monitor complaints closed because of the admonishment and request more thorough investigations when necessary.

RECOMMENDATION: The statistics kept by the IPA are affected by complaints that do not list an officer's name. An under reporting of the statistical background of subject officers results. The unnamed officers are not part of the statistics tracking the unit, gender, ethnicity, and years of experience of the subject officer. Fewer subject officers will be reported in complaint statistics and the number of officers recommended for Intervention Counseling could decrease since the subject officer's name is not tracked.

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¹ The 235 cases include Citizen-Initiated, Informal and Procedural complaints.

NEW LEGISLATION (from page 1)

It is recommended that those complaints that do not have a signed admonishment retain the names of the subject officer(s). Those complaints that are reopened by the Chief of Police as Department-Initiated complaints should continue to be placed in the officer's personnel file. Those complaints that are closed with a "No Finding" need not become part of an officer's personnel file. These complaints could be filed together under a "No Finding" heading.



POLICY and PROCEDURAL CHANGES

AN INCREASE IN COMPLAINTS

The number of new complaints filed at the Professional Standards and Conduct Unit (PSCU) increased 37% in the first half of 1996 compared to the same time period in 1995. Also, the number of complainants utilizing the Office of the Independent Police Auditor (IPA) for complaint intake increased 55% for this reporting period (January 1 through June 30, 1996). Beginning in the third quarter of 1996, the IPA will tape record (with complainant consent) all complaint intakes initiated at the IPA. It is anticipated that having the tape-recorded statement available for the PSCU investigation will streamline the intake process and eliminate needless interviewing of complainants. All complainants will be informed of the process and the need to tape record to ensure that their statements are accurately documented. The recorded statements will then be made available to the PSCU investigator.



COMPLAINT CLASSIFICATION

The IPA recognized a problem with the classification of Discrimination/Harassment allegations. Several complaints that raised allegations of racial discrimination only received Rude Conduct allegations instead of the appropriate Discrimination/Harassment allegations. After the concern was raised with the PSCU, several allegations were changed to accurately indicate a Discrimination/Harassment allegation. The IPA will continue to monitor allegations closely.

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MIDYEAR REPORT STATISTICS

NUMBER OF COMPLAINTS

The following is a breakdown of the total number (321) of complaints received from January 1 to June 30, 1996. The number of Citizen-Initiated (CI), Department-Initiated (DI), Informal (IN), Procedural (PR), Policy (PO) and the complaints still In-Process² are based on the data gathered by the Office of the Independent Police Auditor (IPA) as of June 30, 1996. The IPA initiated 25% of the total complaints received during the first six months of 1996.³



ALL COMPLAINTS RECEIVED January 1 - June 30, 1996	
Citizen-Initiated (CI) Complaints	122
Department- Initiated (DI) Complaints	47
Informal (IN) Complaints	53
Policy (PO) Complaints	20
Procedural (PR) Complaints	60
In-Process ⁴	19
TOTAL	321

UNNECESSARY FORCE COMPLAINTS

Fifty-six (56) Unnecessary Force (UF) allegations from the CI complaints were filed between January and June 1996. When compared to the previous two time periods, UF allegations decreased by 16% over the period from January to June 1995 and decreased by 53% when compared to the period from January to June 1994.

The Office of the Independent Police Auditor (IPA) tracks the type of force the subject officers may have used as alleged by the complainant. The statistics in the following table were based on the 42 CI cases alleging Unnecessary Force. Each complaint may allege more than one type of force. This accounts for the 56 UF allegations and the 61 types of alleged unnecessary force (displayed in the following table).

The information for these statistics was based on the types of force the subject officers used as alleged by the complainants. The subject officers' use of hands, such as

² The In-Process category includes complaints that have been initiated, but not yet classified.

³ Excluding the Department-Initiated Complaints, the IPA initiated 68 Out of the 274 complaints filed during the first six months of 1996.

⁴ See Footnote 2.

pushing or slapping a complainant, accounted for 48% of the different types of force alleged by the complainants. The alleged use of force from the

subject officers' feet, such as leg sweeps or kicking the complainant comprised 15% of the distribution. Tight handcuffs causing pain or injury to the wrists of the complainant accounted for ten percent (10%) of the different types of force alleged by the complaints. The use of the baton for striking or injuring the complainant accounted for eight percent (8%) of the alleged types of force.

For the 1996 time period, there was one UF allegation from a Department-Initiated complaint and the alleged type of force used was a canine and an object.

TYPE OF ALLEGED UNNECESSARY FORCE January 1 - June 30, 1996			
Hands	29	Knee	4
Feet	9	Canines	2
Tight Handcuffs	6	Gun (officer)	2
Baton	5	Object	1
Chemical Agent	4		

DISCIPLINE IMPOSED

From the Citizen-Initiated (CI) complaints closed in the first six months of 1996, there were 17 disciplines imposed on the subject officers. From the Department-Initiated (DI) complaints closed in the first six months of 1996, there were 19 disciplines imposed on the subject officers. The complaints that provided this information closed in the first half of 1996 and were initially filed in 1994, 1995, or 1996.

Training and/or Counseling accounted for 59% of the CI disciplines. Documented Oral Counseling accounted for 42% of the disciplines in the DI cases and for 18% of the disciplines in the CI cases. A Letter of Reprimand was more frequent (21%) in the DI cases than in the CI cases (18%). The 20-Hour Suspension discipline comprised 11% of the DI disciplines, and the 160-Hour Suspension discipline comprised five percent (5%) of the DI disciplines.

Five subject officers were either terminated or resigned pending termination from the

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■ DISCIPLINE IMPOSED (from page 2)

San José Police Department (SJPD) as a result of the CI and the DI complaints closed during the first six months of 1996. Two subject officers were terminated; one officer was subject of a CI case and another officer was subject of a DI case. Three subject officers resigned pending termination from the SJPD; the three officers were subjects of DI cases. The three DI complaints, which produced the three resignations pending termination, involved multiple allegations of Unofficerlike Conduct, Discrimination/ Harassment, and Improper Procedure. The two complaints, which generated the terminations, were closed in 1996, although the complaints were initially filed in 1994 and 1995. The complaints involved multiple allegations of Unofficerlike Conduct and Improper Procedure.

■ POLICY and PROCEDURAL (from page 2)



INTERNET ACCESS

In an effort to maximize the IPA's resources and to increase public awareness, connection to the Internet through the City Network is needed. Greater access to IPA information would be offered to the public by placing the IPA reports on the Internet.

RECOMMENDATION: The City of San José should provide the necessary hardware and software to connect the IPA to the City Network.

GATHERING STATISTICS

The IPA serves as a central collection of information related to citizen complaints. Complaint information is provided monthly to the IPA by the PSCU. The process for exchanging data is time consuming and results in an information lag time.



The IPA and the PSCU are currently working with a consultant hired by the IPA to design and develop a system that will incorporate all the processes currently used at the PSCU and the IPA. This can be accomplished without compromising the requisite security for these very confidential files.

RECOMMENDATION: It is recommended that training for all PSCU investigators be required in order to maximize the initial investment expended in creating the new system. Additionally, a commitment from the Chief of Police is needed to ensure continuity of the use of this database by future PSCU Commanders.

COMPLAINTS BY CITY COUNCIL DISTRICT

The following table illustrates the total number of all complaints received by each City Council District; however, the complaints categorized as In-Process are not included because they are still awaiting classification.

Summary of Complaints Received

January 1 - June 30, 1996

Council District	Type of Complaints					Total Cases	%
	CI	DI	IN	PO	PR		
1 JOHNSON	4	1	1	1	6	13	4%
2 POWERS	11	1	7	2	5	26	6%
3 PANDORI	34	27	14	10	17	102	34%
4 FERNANDES	7	2	4	0	3	16	5%
5 DIAZ	17	2	5	3	6	33	11%
6 FISCALINI	10	3	5	1	8	27	9%
7 SHIRAKAWA, JR.	8	0	4	1	2	15	5%
8 WOODY	9	1	9	2	2	23	8%
9 DIQUISTO	9	2	2	0	7	20	7%
10 DANDO	10	3	2	0	3	18	6%
Unknown/Outside City Limit	3	5	0	0	1	9	3%
TOTAL CASES	122	47	53	20	60	302	100%
%	40%	16%	18%	7%	20%	100%	

Legend: CI = Citizen-Initiated, DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural

STATISTICAL BACKGROUND OF COMPLAINANTS

The Office of the Independent Police Auditor (IPA) created a Voluntary Questionnaire requesting information about the background of the complainant upon filing a complaint. The sole purpose is to monitor trends in an effort to better serve the complainant and the community. This survey was implemented on April 17, 1995.

From the complaint data received between January 1 and June 30, 1996, there were 240 questionnaires completed by the complainants. There may be more questionnaires than complaints received in a time period because each complaint may have more than one complainant listed. Of the 240 questionnaires completed by complainants, sixty-six (66) were from the IPA and 174 were from the PSCU. The process for collecting Voluntary Questionnaires has improved and almost all complainants complete a questionnaire.

The survey asked for information such as the complainant's occupation, primary language, ethnicity, educational level, gender, age range, and type of referral to either the IPA or the PSCU. There were seven questions in the survey and complainants self-reported the answers on the Voluntary Questionnaire.

The first question asked how the complainant had been referred to the PSCU or the IPA, whichever office the complainant contacted. Thirty-seven percent (37%) of the complainants were referred to the PSCU and 35% to the IPA by friends or an organization. Thirty-one percent (31%) of the complainants initiating their complaint at the PSCU were

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GOALS FOR 1996

The goals for 1996 as described in the 1995 Year End report have been accomplished or are in progress. One of the goals was to prioritize the investigation of Unnecessary Force complaints, which will be accomplished by the end of this year. Secondly, a consultant was hired to create a system to merge and automate the information at the PSCU and the IPA. The creation and distribution of a semiannual IPA newsletter is in place.

TIPS ...

Helpful information to obtain before filing a complaint against a San Jose police officer.

- ☛ date, time and location of incident,
- ☛ name, badge number or description of involved police officers,
- ☛ name, phone number and/or address of any potential witnesses

■ **STATISTICAL BACKGROUND** (from page 3)
referred by the Police Department, and 8% of the complainants initiating their complaint at the IPA were referred by the Police Department. Other referrals listed by complainants included city officials, media, or personal knowledge.

The second question inquired about the complainant's most current or recent occupation. Occupations were diverse and ranged from business owners to unemployed complainants.

Similarly, the third question asked for the highest educational level completed by the complainant. Thirty-five percent (35%) of the complainants graduated from high

school, and 43% indicated college education. The level of education of the complainants was higher than the average level of education for Santa Clara County.⁵

The fourth question asked about the ethnic background of the complainant. Forty-three percent (43%) of the complainants identified themselves as Hispanic/Latino and 29% identified themselves as White/European-American.

The fifth question revealed that English was the primary language spoken by 89% of the complainants that completed a Voluntary Questionnaire. Other languages spoken by complainants included Spanish and Vietnamese.

The sixth question inquired about the gender of the complainant. Fifty-five percent (55%) of the complainants were male and 45% were female.

The final question requested information about the age of the complainant. Most complainants (53%) were within the age range of 31-59 years.

5 Claritas/NPDC 1992, Population by race education level - Santa Clara County. Market research firm, 1990 census data for Santa Clara County projected into the current year.

To file a complaint against a SJPD officer, contact:

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4 N. Second St., Ste. 650
San Jose, CA 95113
Tel (408) 977-0652
Fax (408) 977-1053

OR

THE PROFESSIONAL STANDARDS & CONDUCT UNIT

777 N. First St., Ste. 666
San Jose, CA 95112
Tel (408) 277-4094
Fax (408) 277-3920

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**We welcome your comments about
this newsletter!!**



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